

Z. D. GILMAN, CO., INC.

JULY 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 350]

The Committee on the Judiciary to whom was referred the bill (S. 350) for the relief of Z. D. Gilman Co., Inc., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 360, Eighty-second Congress, first session, which is appended hereto and made a part of this report. Your committee concur in the recommendation of the Senate.

[S. Rept. No. 360, 82d Cong., 1st sess.]

The purpose of the proposed legislation is to pay the sum of \$2,761.01 to the Z. D. Gilman Co., Inc., District of Columbia, in full satisfaction of its claim against the District of Columbia, for the unpaid price of medical supplies furnished to the Gallinger Municipal Hospital during the years 1944, 1945, and 1946.

STATEMENT

During the years 1944, 1945, and 1946, Z. D. Gilman, Inc., pursuant to orders from a property officer of the Gallinger Municipal Hospital of the District of Columbia, sold medical supplies to the Gallinger Hospital. The aggregate value of the supplies delivered was \$2,761.01. The medical supplies were purchased without regard to the provisions of law requiring that purchases be made through the purchasing officer of the District of Columbia after advertisement prior to purchase. Z. D. Gilman, Inc., sought payment at frequent intervals. The corporation was at first denied payment because the property officer stated that he lacked competent personnel in his office to issue the "finished orders." Shortly thereafter, the property officer was relieved and after some delay a new property officer was appointed. Payment was again delayed, however, until finally the statute of limitations had expired. Thereafter the claim of the Z. D. Gilman Corp. was studied by the Office of the Corporation Counsel for the District of Columbia, who concluded that the claim was meritorious but could not be paid inasmuch as the statute of limitations had run. The Corporation Counsel recommended the introduction of a private bill.

The Commissioners in their report on this legislation state that they believe that the claim is meritorious and it should be approved. The Department of Justice, however, prefers to make no recommendation concerning the bill, inasmuch as the Department considers it a matter of legislative policy.

The committee feels that inasmuch as the Gallinger Hospital received the medical supplies and has accepted the benefits thereof, this claimant should be reimbursed. The fact that the statute of limitations has now run on this claim does not appear to have resulted from any negligence or carelessness on the part of the claimant but rather from the inaction of the property officers of the Gallinger Hospital. It seems clear that if this claim had been presented to the Commissioners for the District of Columbia prior to the running of the statute of limitations, that the claim would have been approved notwithstanding the original lack of authority on the part of the property officer inasmuch as the Board of Commissioners later adopted the recommendation of the Corporation Counsel which included a statement that "Unless, therefore, there are other reasons why the District of Columbia would not be liable on these claims, it is believed that they should be settled pursuant to section 1-902 (b) [D. C. Code, 1940 ed.]." While the Corporation Counsel found, later in his report, reasons why the Commissioners of the District of Columbia could not settle this claim administratively, he nevertheless stated that in equity and good conscience the award ought to be made and a private bill ought to be introduced for that purpose.

In view of the fact that this bill provides that this sum shall be deducted from the money in the Treasury credited to the general fund of the District of Columbia, the opinion of the Board of Commissioners is persuasive. Accordingly, it is the recommendation of the committee that this bill be favorably considered.

Attached to this report is the report of the Board of Commissioners, an affidavit of the secretary-treasurer of the Z. D. Gilman, Inc., and the opinion of the Corporation Counsel as approved by the Board of Commissioners.

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, March 6, 1951.

The honorable the ATTORNEY GENERAL,
Department of Justice, Washington, D. C.

DEAR SIR: Replying to the request in the letter dated January 26, 1951, addressed to the Commissioners by the Honorable Peyton Ford, Deputy Attorney General, in regard to S. 350, Eighty-second Congress, a bill for the relief of the Z. D. Gilman Co., Inc., the Commissioners wish to advise you as follows:

During the years 1944, 1945, and 1946, the Z. D. Gilman Co., Inc., of 627 Pennsylvania Avenue NW., Washington, D. C., delivered to the Gallinger Municipal Hospital, medical and surgical supplies and services in the amount of \$2,761.01. It appears that the supplies and services furnished were ordered by a former property officer at the hospital without regard to provisions of law requiring that purchases be made through the purchasing officer of the District and requiring advertising prior to purchase.

The Commissioners of the District of Columbia are without authority to settle this claim by reason of the running of the statute of limitations. However, this is a meritorious claim and the Commissioners believe that the bill should be approved.

Very truly yours,

JOHN R. YOUNG,
President, Board of Commissioners, District of Columbia.

CITY OF WASHINGTON,
District of Columbia, ss:

AFFIDAVIT

I, Veronica P. Joyce, secretary-treasurer of Z. D. Gilman, Inc., a body corporate engaged in the wholesale and retail drug business in the District of Columbia with principal offices at 627 Pennsylvania Avenue NW., Washington, D. C., being duly deposed and sworn, state:

(a) That during the years 1944, 1945, and 1946, pursuant to emergency orders from a responsible purchasing officer of the Gallinger Municipal Hospital of the District of Columbia, medical supplies having an aggregate value of \$2,761.01 were sold by said Z. D. Gilman, Inc., and delivered to and were duly received by said hospital;

(b) That no part of said sum has been paid, although duly demanded;
(c) That said Z. D. Gilman, Inc., duly billed Gallinger Municipal Hospital for such supplies upon each such delivery;

(d) That said Z. D. Gilman, Inc., at frequent intervals demanded of said purchasing officer the issuance of "furnished orders" and was repeatedly assured that appropriate action would be taken; that such purchasing officer took no such action giving as his reason therefor delays in consequence of lack of competent personnel in his office;

(e) That your deponent was informed that said purchasing officer was in due course relieved of his duties; that an unreasonable period of time elapsed before the new purchasing officer was in a position to consider the claim of Z. D. Gilman, Inc., and after approval thereof to present said claim to the District of Columbia purchasing officer; that during this period said Z. D. Gilman, Inc., made repeated and frequent demands for payment of such claim;

(f) That thereafter further delays occurred in preparing necessary paper work and in passing said paper between said District of Columbia purchasing officer and the Gallinger Municipal Hospital's purchasing officer; that during this period said Z. D. Gilman, Inc., continued its demand for payment of its said claim;

(g) That thereafter said claim was apparently approved by the District of Columbia purchasing officer and the District of Columbia auditor; that before such approval was obtained much additional time had elapsed and the period of limitations on said claim had run; that during this period said Z. D. Gilman, Inc., continued to press said hospital for payment of said claim;

(h) That said claim of Z. D. Gilman, Inc., was thereupon referred to the District of Columbia Corporation Counsel for study;

(i) That after due consideration and approval of said claim in full and on its merits by said Corporation Counsel and the District of Columbia Board of Commissioners had been had, the claim was referred back to the District of Columbia auditor who thereupon advised said Z. D. Gilman, Inc., under date of October 18, 1950, that the goods were received and accepted in good faith and the payment therefor should be made and that the only manner in which said District of Columbia could discharge its obligation and effect payment of such claim was to have said Z. D. Gilman, Inc., introduce a private bill in Congress for this purpose; that a photostatic copy of such letter is annexed hereto;

(j) That Corporation Counsel in his opinion dated July 31, 1950, indicated that while the Commissioners were without authority to settle this claim pursuant to section 1-902 (b), District of Columbia Code, 1940 edition, by reason of the running of the statute of limitations (sec. 12-201, D. C. Code, 1940 ed.), nevertheless it was his opinion in equity and good conscience that the claim should be paid and that the Commissioners should give consideration to the introduction of a private bill for the relief of Z. D. Gilman, Inc., in the amount of \$2,761.01;

(k) That the Commissioners approved the said opinion from the Corporation Counsel at their board meeting on the 3d of August, 1950; that a photostatic copy of said opinion and approval is annexed hereto.

Your deponent prays therefore that the relief requested in private bill S. 350, Eighty-second Congress, first session, be granted.

In witness whereof, I have hereunto set my hand and seal this 29th day of January 1951.

VERA P. JOYCE.

Subscribed and sworn to before me this 29th day of January 1951.

[SEAL]

S. J. COSIMANO,
Notary Public, District of Columbia.

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, November 7, 1950.

I hereby certify that the following is a true and correct copy of an opinion from the Corporation Counsel, District of Columbia, dated July 31, 1950, approved by the Commissioners of the District of Columbia at their Board meeting on the 3d of August 1950.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE CORPORATION COUNSEL,
Washington 4, D. C., July 31, 1950.

To: The Commissioners.

In re: Claims of the Kloman Instrument Co., Inc., and the Z. D. Gilman Co., Inc., for the purchase price of certain medical and surgical supplies and service furnished the Gallinger Municipal Hospital.

REPORT

The claims are supported by vouchers and accompanying papers which indicate that during the years 1946 and 1947 the Kloman Instrument Co. furnished the Gallinger Municipal Hospital medical and surgical supplies and services in the amount of \$1,635.19 and that during the years 1944, 1945, and 1946 the Gilman Co. furnished the Gallinger Municipal Hospital medical and surgical supplies and services in the amount of \$2,761.01. The superintendent of the hospital has certified that the items enumerated were received and used by the hospital.

It appears that the supplies and services furnished were ordered by a former property officer at the Gallinger Municipal Hospital without regard to the provisions of section 1-304, District of Columbia Code, 1940 edition, and in violation of section 1-808 of the code which requires prior advertising for purchases of goods and services other than personal services, except in cases where the amount involved does not exceed \$100, and in certain other cases not here important.

The Commissioners are empowered by section 1-902, District of Columbia Code, 1940 edition, to settle, in their discretion, claims against the District of Columbia whenever such claims arise "(b) * * * out of the existence of facts and circumstances which place the claim * * * within the doctrines and principles of law decided by the courts of the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia."

In the early case of *Marsh v. Fulton County* (10 Wall., 77 U. S. 676, 19 L. ed. 1040), the court drew a distinction between the right to enforce a contract created contrary to a statute and the right to recover the property obtained under such contract. The court said that the obligation to do justice is imposed upon all persons natural and artificial, and that if a county obtains money, property or services of others without authority, the law, independent of a statute, will compel restitution or compensation therefor.

The doctrine of this case controlled the decisions of the Supreme Court in *Louisiana v. Wood* (102 U. S. 294, 26 L. ed. 153); *Parkersburg v. Brown* (166 U. S. 487, 27 L. ed. 238); *Litchfield v. Ballou* (114 U. S. 109, 29 L. ed. 132). In *City of Floydada v. American-La France & Foamite Industries, Inc.* ((C. C. A. 5), 87 F. 2d 820), the court, in commenting on the logic and reasoning of *Marsh v. Fulton County*, supra said:

"The integrity of human rights and property rights, and the promotion of an honorable public policy, equals, if it does not supersede, technical rules of public policy. * * * When justice and honesty are left out of the law, the law breaks down, and with it falls the mainstay of modern civilization."

The instant claims fall squarely within the doctrine of *Marsh v. Fulton County*, supra. Here the District of Columbia had the power, had it proceeded in the manner prescribed by law, to acquire the supplies and services in question. The goods and services have been received and the District of Columbia has accepted the benefits thereof. Unless, therefore, there are other reasons why the District of Columbia would not be liable on these claims, it is believed that they should be settled pursuant to section 1-902 (b), supra.

Upon examination of the vouchers and accompanying papers submitted in support of these claims, it appears that all but three of the items enumerated were purchased and delivered to the Gallinger Municipal Hospital more than 3 years prior to August 1, 1947. The three items purchased and delivered to the hospital subsequent to August 1, 1947, are set forth in the voucher of the Kloman Instrument Co. as follows:

Oct. 10, 1947, 1 Singer cup-----	\$11
Oct. 10, 1947, 2,000 blue beads-----	4
Oct. 21, 1947, 3 stitch scissors-----	18
Total-----	33

The claim of the Gilman Co. and the claim of the Kloman Instrument Co. except as to these three items, are therefore barred by the statute of limitations (sec. 12-201, D. C. Code, 1940 ed.).

In section 1-903, District of Columbia Code, 1940 edition, it is provided that nothing contained in section 1-902, *supra*, shall be construed as reducing the period of limitations. This section is understood to mean that the Commissioners may not waive the defense of the statute of limitations and the District of Columbia is required to avail itself of the defense. (*Lake, to Use of Peyser v. District of Columbia* (63 App. D. C. 306, 72 F. 2d 174.))

Although it appears that the Commissioners are without authority to settle these claims pursuant to section 1-902 (b), *supra*, this office is of the opinion that, in equity and good conscience, the claims should be paid, and that the Commissioners should give consideration to the introduction of private bills for that purpose.

Since the three items which are not barred by the statute of limitations represent only a small fraction of the total amount of these claims, it is felt that the two claims should be considered by the Commissioners in their entirety and on the basis of the equities involved.

RECOMMENDATIONS

1. That the Commissioners give consideration to the introduction of private bills for the relief of the Kloman Instrument Co., Inc., in the amount of \$1,635.19, and the Z. D. Gilman Co., Inc., in the amount of \$2,761.01; and

2. That copies of this opinion be furnished to the budget officer, District of Columbia, the purchasing officer, District of Columbia, and the auditor, District of Columbia.

VERNON E. WEST,

Corporation Counsel, District of Columbia.

G. M. THORNETT,

Secretary, Board of Commissioners, District of Columbia.



